



**STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES**

COMPETITIVE NEGOTIATION

FOR

**SHELBY COUNTY
RESIDENTIAL LEVEL III CONTINUUM
TREATMENT SERVICES
RFS #359.30-618**

CONTENTS	
Section 1	Introduction
Section 2	Competitive Negotiation Schedule
Section 3	Communication Requirements and Other Information
Section 4	Proposal Information
Section 5	Proposal Format & Content
Section 6	Minimum Requirements
Section 7	Proposal Requirements
Section 8	Pro Forma Contract

1. **INTRODUCTION**

Statement of Purpose

The purpose of this **FUNDING OPPORTUNITY** is to define the State's minimum requirements, solicit proposals, and gain adequate information by which the State may evaluate the services offered by Proposers.

The State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the State, intends to secure a contract for Residential Level III Continuum Treatment Services.

The scope of services for Level III Continuum is detailed in the Department of Children's Services Provider Policy Manual that may be found at <http://www.state.tn.us/youth/providers/index.htm>.

Service Details

Region:	Shelby
Level of Service:	Residential Level III Continuum Treatment Services
Requested Slots:	2,440
Contract Term:	This Contract shall be effective for the period commencing on March 1, 2009 and ending on June 30, 2009, The State shall have no obligation for services rendered by the Contractor, which are not performed within the specified period.
Population to be served:	Male & Females
Special Requirements:	Providers must be able to serve youth who are adjudicated delinquent, and must be located in Shelby County.

2. **COMPETITIVE NEGOTIATION SCHEDULE**

The following Schedule of Events represents the State's best estimate of the schedule that shall be followed. Unless otherwise specified, the time of day for the following events shall be between 8:00 a.m. and 4:30 p.m., Central Time.

The State reserves the right, at its sole discretion, to adjust this schedule as it deems necessary. Notification of any adjustment to the Schedule of Events shall be provided to all vendors.

	EVENT	DATE	TIME
1	State Issues Competitive Negotiation	January 29, 2009	
2	Deadline for Submitting a Proposal <u>and</u> State Opens Proposals	February 18, 2009	10:00 a.m. CT
3	State Sends a written Notice to Proposers <u>and</u> State Opens Files for Public Inspection	February 20, 2009	
4	Anticipated Contract Start Date	March 1, 2009	

3.

COMMUNICATION REQUIREMENTS AND OTHER INFORMATION

COORDINATOR:

The following Coordinator shall be the main point of contact for this Competitive Negotiation:

David Arrington
Department of Children's Services
436 6th Avenue North
7th Floor, Cordell Hull Building
Nashville, TN 37243
Telephone Number: (615) 532-7849
Fax Number: (615) 244-8969
Email Address david.arrington@state.tn.us

Communications Regarding the Competitive Negotiation

- All vendor communications concerning this procurement must be directed to the Coordinator. Unauthorized contact regarding this procurement with other State employees of the procuring state agency may result in disqualification.
- All communications should be in writing to the Coordinator. Any oral communications shall be considered unofficial and nonbinding on the State
- E-mail communications are acceptable.
- The State shall respond in writing to written communications. The State reserves the right, at its sole discretion, to determine appropriate and adequate responses to written comments, questions, and requests for clarification.

Right of Rejection

- The State reserves the right, at its sole discretion, to reject any and all proposals or to cancel the Competitive Negotiation in its entirety.
- Any proposal received, which does not meet the requirements of this Competitive Negotiation, may be considered to be nonresponsive, and the proposal may be rejected.

Selection Criterion

All proposals are reviewed by a group of state employees selected by the Department of Children's Services. The minimum number of state employees on a review team will be three (3). Based on the evaluations of the panel selections will be made and submitted for final approval to the Commissioner of the Department of Children's services or his/her designee.

The Department of Children's Services reserves the right to further negotiate proposals submitted for consideration.

4. PROPOSAL INFORMATION

SUBMITTING THE PROPOSAL

All proposals **MUST** be submitted to the Department of Children's Services at the following address:

David Arrington
Department of Children's Services
436 6th Avenue North
7th Floor, Cordell Hull Building
Nashville, TN 37243

Proposal Deadline

Proposals shall be submitted no later than the Proposal Deadline time and date detailed in the Section 2, Schedule of Events. A Proposer's failure to submit a proposal as required before the deadline shall cause the proposal to be disqualified.

Proposers assume the risk of the method of dispatch chosen. The State assumes no responsibility for delays caused by any delivery service. Postmarking by the due date shall not substitute for actual proposal receipt by the State. Late proposals shall not be accepted nor shall additional time be granted to any potential Proposer.

Proposals may not be delivered orally, by facsimile transmission, or by other telecommunication or electronic means.

5. **MINIMUM REQUIREMENTS**

DCS now requires that all Level III Continuum contracts be performance based.

OVERVIEW:

The Department's Performance-Based Contracting (PBC) initiative is the first phase of a greater overarching plan to achieve better and timelier outcomes for the children served by DCS. In the past, DCS has purchased out-of-home care services for children in its custody via a per diem reimbursement system. Performance-Based Contracting uses an innovative approach that stresses permanency outcomes for children and utilizes a payment structure that reinforces provider agencies' efforts to offer services that improve those outcomes. Those permanency outcomes that will be measured include: improved timeliness and likelihood of permanency (reunification, adoption, or guardianship), reduced placement moves, and reduced re-entries into care.

The Department is committed to implementing this system for all those agencies delivering out-of-home care services. This commitment is driven by the desire to achieve better outcomes for children and not to reduce out-of-home care cost. The Department believes that our community partners share in this desire to achieve better outcomes for children and are equally committed to serving the needs of Tennessee's children.

REQUIREMENTS & CONDITIONS:

Listed below are the requirements and conditions that comply with the Department's visions, goals and objectives for Performance-Based Contracting and the delivery of services that are strengths-based, culturally competent and family-focused. Provider agencies participating will be selected from those agencies that respond comprehensively to this solicitation. In order for a provider agency to participate in this initiative, their submission should address the following areas:

1. **Minimum Requirements** – Documentation of the following **must** be met for responses to adhere to the requirements of Performance-Based Contracting and be eligible for review:
 - Agency must be accredited, or have applied for accreditation with a nationally recognized accreditation body,
 - Agency must display evidence they are actively working to meet the accrediting body's established timelines for completion of accreditation;
 - Agency must currently contract with DCS directly for services;
 - Agency must serve 30 or more DCS children within a one-year period. This is the minimum number of children served that will allow for a reliable data validation;
 - Agency must have all required licenses and educational requirements;
 - Agency must maintain and have access to operating capital of ninety (90) days. Please note for agencies submitting a proposal as a partnership, joint venture, collaborative or consortium, the proposal must clearly define each agency's financial commitments and obligations; and,
 - Agency must agree to incorporate the Tennessee Child & Adolescent Needs and Strengths (TNCANS) as well as the Youth Level of Service (YLS) assessment tools the Department utilizes for making Level of Care recommendations.

2. Additional Items to Be Addressed – Agencies eligible for review will need to address the following issues comprehensively within their submission in order to be considered for inclusion in Phase III of the Performance-Based Contracting Initiative:

- Agency's current performance, as measured by Chapin Hall (as well as additional, supplemental assessments tools to be determined by the Department) is acceptable to DCS;

Note: Respondents please be aware that agencies may also be evaluated on reports gathered from, but not limited to, the following sources: Provider Accountability Review (PAR), Quality Service Review (QSR), and Serious Incident Reports (SIR).

- As the primary contracting entity, the responding agency must display a willingness to accept sole responsibility for performance regarding PBC outcome measures achieved on the part of any and all sub-contracting relationships;

6. PROPOSAL FORMAT AND CONTENT

Any proposal received which does not meet the requirements of this Competitive Negotiation, may be considered to be nonresponsive, and the proposal may be rejected.

- Proposals should be prepared simply and economically and provide a straightforward, concise description of the Proposer's capabilities to satisfy the requirements of the Competitive Negotiation. Emphasis should be on completeness and clarity of content.
- Proposers must follow all formats and address all portions of the Competitive Negotiation set forth herein providing all information requested. Any proposal received, which does not meet the requirements of this Competitive Negotiation, may be considered to be nonresponsive, and the proposal may be rejected.
- Proposers must respond to every section identified. Proposers must label each response with the section numbers associated with the subject requirement.
- Proposal materials must be submitted in the order indicated on the checklist, Section 7. Proposal Requirements.

Failure to follow the specified format, to label the responses correctly, or to address all of the sections may, at the State's sole discretion, result in the rejection of the Proposal.

- Proposals shall be type written, double spaced on standard 8 1/2" x 11" white paper, Font size of 10 with 1" margins.
- All proposal pages must be numbered and stapled or otherwise secured.
- The proposal must include a table of contents
- The number of copies for each item must be submitted as indicated.

7. **PROPOSAL REQUIREMENTS**

FAILURE TO PROVIDE ANY OF THE INFORMATION INDICATED BELOW AND IN THE SPECIFIED FORMAT MAY BE CONSIDERED NONRESPONSIVE AND RESULT IN THE REJECTION OF THE PROPOSAL.

Each PROPOSAL **must** include the items listed below:

1. Cover page:
 - Competitive Negotiation # 359.30-618
 - Federal Employee Identification Number (FEIN);
 - Residential Level III Continuum Treatment Services
 - Include the names, addresses, contact names, phone number and email address for contact person for the agency.
 - State of Incorporation
 - Profit or Non-Profit
2. Agency's legal name, executive officer, contact name, phone and fax number, address and any other identifying information;
3. Brief 1-2 paragraph statement as to the background and history of the agency;
4. Statement of agency readiness and experience to provide the full array of services for Level III Special Needs Enhanced A&D Rehabilitation Program services within the Davidson Mid Cumberland regions.
5. Include a prospective date that services will be available to DCS.
6. Identify agency capacity for Level III Continuum Treatment Services as follows:
 - a. Type of License:
 - b. Licensing bed capacity:
 - c. Number of bed capacity available to DCS:
 - d. Number of residential/group home bed capacity:
 - e. Number of resource homes:
 - f. Population served (Male and/or female):
7. Documentation of agency's clinical experience including statistical data supporting the agency's overall success rates; and,
8. Briefly describe (in *no more* than two [2] pages), the agency's service milieu and how the full array of services will be applied throughout the continuum. Indicate if the service will be provided by the agency as the primary contractor or through sub-contractual relationships with other agencies. If sub-contracting (or intending to sub-contract) for the identified service, please include name of the sub-contractor (or prospective sub-contractor) who will provide each component.

9. All appropriate licenses, accreditations, application for accreditation and proof of agency's compliance with educational requirements per level of care. If an agency engages sub-contracted services, the primary contracting agency will be responsible for submitting all verification of the sub-contractor's applicable licenses, accreditations, application for accreditation and educational requirements;
10. Liability Insurance;
11. Documentation from a financial institution attesting to the responding agency's financial health and a copy of the responding agency's most recent independent audit;
12. Documentation of access to operating capital for a period of ninety (90) days;
13. Agency must have a strong in-home service component which would ideally include a full array of after-care services. Documentation of this ability will be in the form of a 2-3 page summary of the agency's in-home service component;
14. Agency's strategic plan and clinical methodology. This brief synopsis should be no longer than two (2) pages, detailing the agency's ability to achieve the following outcomes:
 - a. A reduction in the number of paid care days for children in the care and custody of DCS;
 - b. A reduction in the percentage of children re-entering protective custody after achieving a permanent exit; and,
 - c. An increase in the number of children achieving permanency through finalized adoption, reunification or guardianship.
15. Include **Five (5) Copies** of your proposal.

8. PRO FORMA CONTRACT

CONTRACT BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF CHILDREN'S SERVICES AND [CONTRACTOR]

This Contract, issued under Special Delegated Authority (DA NUMBER), by and between the State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the "State" and [PRIVATE PROVIDER LEGAL ENTITY NAME], hereinafter referred to as the "Private Provider," is for the provision of [SHORT DESCRIPTION OF THE SERVICE], as further defined in the "SCOPE OF SERVICES" contained in the DCS Provider Policy Manual herein attached by reference.

The Private Provider is [AN INDIVIDUAL / A FOR-PROFIT CORPORATION / A NONPROFIT CORPORATION / A SPECIAL PURPOSE CORPORATION OR ASSOCIATION / A FRATERNAL OR PATRIOTIC ORGANIZATION / A PARTNERSHIP / A JOINT VENTURE / A LIMITED LIABILITY COMPANY].

Private Provider Vendor Identification Number: FEDERAL EMPLOYER ID # OR SOCIAL SECURITY #

Private Provider Place of Incorporation or Organization: LOCATION

A. SCOPE OF SERVICES:

- A.1. The Private Provider shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Private Provider shall provide up to but not exceeding (NUMBER) client days of (TYPE OF SERVICE) services. This service is more fully described in the DCS Provider Policy Manual.
- A.3. The Private Provider must maintain appropriate licensure required to provide the services covered by this contract. The Private Provider must notify the DCS Contracts and Grants Management Division immediately, in writing, of any change in licensure status.
- A.4. The DCS shall evaluate each contract annually to ensure accountability, cost-effectiveness of service provision, and achievement of positive outcomes for children and families as evidenced by both qualitative as well as quantitative performance measurement as defined by DCS
- A.5. DCS shall evaluate the Private Provider in the following areas as detailed in the DCS Provider Policy Manual including any changes or additions that may subsequently be made:
 1. Child Safety
 2. Movement
 3. Permanency/Successful Program Completion
 4. Family Involvement:
 5. Reporting and Compliance:
- A.6. The Private Provider will work in compliance with the system DCS is developing for continuous quality improvement, which includes, but is not limited to, the Quality Service Review, the DCS Balanced Scorecard, and the ongoing monitoring and evaluation of performance.

- A.7. The Private Provider must request a Child & Family Team Meeting (CFTM) from the DCS Home County Family Service Worker (FSW) prior to the move of a child. Notification of Emergency moves must be in accordance with the DCS Private Provider Policy Manual and reported the next business day with an immediate request for a CFTM.

A move is any change in placement (internal and external to the agency) location except for temporary breaks in service as further defined in the DCS Private Provider Policy Manual and incorporated herein by reference.

- A.8. The Private Provider **MUST** report all movement of children (internal and external to the agency) through the Financials Movement Notification Web Application and in accordance with the Private Provider Policy Manual. No other method of reporting movement is acceptable unless the agency can demonstrate a problem with the application.
- A.9. If resource home services are provided as a part of this contract, the Private Provider will place children only in resource homes that are in full compliance with DCS Administrative Policy 16.4 "Foster Home Study, Evaluation and Training Process" and the DCS Private Provider Manual on the date of placement.
- A.10. The Private Provider will incorporate and accept the Child & Adolescent Needs and Strengths (CANS) assessment analysis for establishing a level of care recommendation upon implementation by DCS.
- A.11. The Private Provider will participate in the development and the use of any State Automated Child Welfare System (SACWIS) developed and implemented by DCS.
- A.12. The Private Provider shall report all face-to-face (F2F) contact information on every child currently placed with the Private Provider into the face-to-face web application as outlined in the DCS Private Provider Policy Manual. The F2F contact information must be submitted to DCS through the F2F web application and must include child specific identifying information related to the following:
- a. The number of face-to-face contact between custodial child and siblings;
 - b. The number of face-to-face contacts with parent(s) or adults identified as potential permanency placement on permanency plan;
 - c. The number of children and families involved in service planning;
 - d. The number of face-to faces contacts between custodial child and Private Provider Case Manager; and
 - e. The number of face-to face contacts between custodial child on a trial home visit and Private Provider Case Manager.

B. CONTRACT TERM:

Contract Term. This Contract shall be effective for the period commencing on March 01, 2009 and ending on June 30, 2009. The State shall have no obligation for services rendered by the Private Provider which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed [WRITTEN DOLLAR AMOUNT], (\$[NUMBER AMOUNT]). The payment rates in Section C.3 shall constitute the entire compensation due the Private Provider for the Service and all of the Private Provider's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, profit, and all other direct and indirect costs incurred or to be incurred by the Private Provider.

The Private Provider is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Private Provider and does not guarantee payment of any such funds to the Private Provider under this Contract unless the State requests work and the Private Provider performs said work. In which case, the Private Provider shall be paid in accordance with payment rates detailed in Section C.3. The State is under no obligation to request work from the Private Provider in any specific dollar amounts or to request any work at all from the Private Provider during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to increase for any reason unless amended.
- C.3. Payment Methodology. The Private Provider shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Private Provider's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Private Provider shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)*
Service Description	\$ NUMBER per client per day

* The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required in section C.5. below) for said service(s) within thirty (30) days after the end of the calendar month in which service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Private Provider must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Private Provider's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Private Provider to this Contract.

- c. The Private Provider shall not be compensated for travel time to the primary location of service provision.
- d. A "day" shall be defined as any period of time in the 24-hour period of a calendar day. The Private Provider shall be paid the full rate per day per client placed with the Private Provider, EXCEPT the Private Provider shall NOT be paid any amount for the day that the client is removed from the placement with the Private Provider.

Reinvestment Methodology. The State shall reinvest state dollar savings with the Private Provider based on the achievement of outcomes. The percentage of state dollar savings to be reinvested with the Private Provider and the Private Provider paybacks for failure to achieve outcomes are defined in the following table:

	YEAR ONE	Private Provider Reinvestment of State Dollar Expenditure	State Reinvestment of State Dollar Savings	
			Care Days Less than Baseline	Care Days Equal to or Less than Target
1	Exits to permanency less than baseline and re-entries greater than baseline	0%	90%	100%
2	Exits to permanency less than baseline and re-entries less than baseline range and greater than targeted re-entries	0%	95%	105%
3	Exits to permanency less than baseline and re-entries less than or equal to targeted re-entries	0%	100%	110%
4	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries greater than re-entry baseline range	0%	95%	105%
5	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	0%	100%	110%
6	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than or equal to targeted re-entries	0%	105%	115%
7	Exits to permanency greater than targeted exits to permanency and re-entries equal to or greater than baseline range	0%	100%	110%
8	Exits to permanency equal to or greater than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	0%	105%	115%
9	Exits to permanency greater than targeted exits to permanency and re-entries equal to or less than targeted re-entries.	0%	110%	120%

YEAR TWO and THREE NOTE: Negative percentages reflect Private Provider Reinvestments of State Dollar Expenditure incurred by providers above baseline care days.		Private Provider Reinvestment of State Dollar Expenditure	State Reinvestment of State Dollar Savings	
		Care Days Equal to or Greater than Baseline	Care Days Less than Baseline	Care Days Equal to or Less than Target
10	Exits to permanency less than baseline and re-entries greater than baseline	-100%	80%	90%
11	Exits to permanency less than baseline and re-entries less than baseline range and greater than targeted re-entries	-90%	90%	100%
12	Exits to permanency less than baseline and re-entries less than or equal to targeted re-entries	-85%	95%	105%
13	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries greater than baseline range	-90%	90%	100%
14	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	-80%	100%	110%
15	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than or equal to targeted re-entries	-75%	105%	115%
16	Exits to permanency greater than targeted exits to permanency and re-entries equal to or greater than baseline range	-90%	90%	100%
17	Exits to permanency equal to or greater than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	-75%	105%	115%
18	Exits to permanency greater than targeted exits to permanency and re-entries equal to or less than targeted re-entries	-70%	110%	120%

Performance will be evaluated semi-annually and compensation for reinvestment dollars will be paid to the Private Provider annually. Private Provider paybacks will be netted against payments.

All performance (Exits, Care Days and Re-entries) will continue to be monitored throughout the term of the contract. Performance expectations will continue to be based on historical performance of the original base line population.

Performance Based Reinvestment Definitions

In Care Population - The population in care as of July 1, 2008 will be established from a TNKIDS census of all active cases on August 1, 2008. DCS will establish an interim census count of all active TNKIDS cases from a June 1, 2008 data snapshot. The population in care will be adjusted to reflect the August 1, 2008 data on or before August 15, 2008.

Baseline -- The baseline expresses how the Private Provider would be expected to perform (i.e., achieve safety and permanency for children) under a "business as usual" scenario. The baseline is created using historical TNKIDS data and reflects the traditional or normal pattern of paid care day utilization for a specific provider.

Baseline Admissions -- The expected number of children admitted to the Private Provider during the fiscal year, based on the historical number of annual admissions.

Baseline Care Days -- The expected number of bed days a Private Provider would be anticipated to use within one fiscal year, based on the number of children in the in care population, the number of admissions, and the average placement duration for the children in the in care and admission populations. The initial baseline care days will be based on the number of children in the in care population, the historical number of admissions and the historical average of care days. This baseline will be adjusted at the end of each fiscal year to reflect actual admissions and actual average care days.

Baseline Exits to Permanency -- The number and percent of children, from the corresponding in care and admission populations, a Private Provider would be expected to exit from out-of-home care, within the fiscal year, to permanency (as defined in this section).

Baseline Re-entries -- The number and percent of children discharged to permanency who may be expected to return to care, given historical performance. For purposes of estimating the reentry to care, return to out-of-home care means any child who returns to out of home care within a year of the child's permanent exit, whether the foster home is supervised by DCS, or a private provider. For purposes of calculating the re-entry rate, the base includes children discharged to permanency from either the in care or admission population within the fiscal year, who returns to care **within a year**. Reentries (as defined above) will continue to be tracked against the historical performance in the next fiscal year.

Baseline Re-entries Range -- A plus or minus range built around the baseline reentry rate that captures variation in the reentry rate observed at the agency level. The range is intended to reflect the fact that factors beyond the control of an agency (e.g., sibling groups) may influence the reentry rate.

Targeted Care Days -- The total number of paid care days a Private Provider is expected to provide given improvements in outcomes for children (i.e., safety and permanency). The difference between the target care days and the baseline caredays, expressed as a percentage, is the performance improvement for purposes of calculating the reimbursement.

Targeted Exits to Permanency -- The number and percent of children for whom a Private Provider can be projected to achieve a permanent exit, given improvement in performance.

Targeted Re-entries -- The number and percentage of returns to out of home care after a successful exit to permanency within the fiscal year.

Re-entry to Custody -- Any child that has a permanent exit from care and returns to custody within one (1) year.

Exits to Permanency -- All exits that are intended to provide the child with a stable, permanent family: reunification, guardianship and adoption.

Non-permanent Exits – All exits (e.g., transfers, runaway) that are not permanent.

C.4. Travel Compensation. The Private Provider shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Private Provider shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Private Provider shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Department of Children's Services
436 6th Avenue North
Nashville, TN 37243

b. The Private Provider agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Private Provider);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Children's Services/Child Placement and Private Providers Division;
- (6) Account/Customer Number (uniquely assigned by the Private Provider to the above-referenced Account Name);
- (7) Private Provider Name;
- (8) Private Provider Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Private Provider Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Private Provider Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

c. The Private Provider understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

d. The Private Provider agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

- e. The Private Provider shall complete and sign a "Substitute W-9 Form" provided to the Private Provider by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Private Provider. The Private Provider shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Private Provider's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Private Provider under this or any contract between the Private Provider and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Private Provider.
- C.9. Automatic Deposits. The Private Provider shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Private Provider by the State. Once this form has been completed and submitted to the State by the Private Provider all payments to the Private Provider, under this or any other contract the Private Provider has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Private Provider shall not invoice the State for services until the Private Provider has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Private Provider at least thirty (30) days written notice before the effective termination date. The Private Provider shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Private Provider for compensation for any service which has not been rendered. Upon such termination, the Private Provider shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Private Provider fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Private Provider violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Private Provider shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Private Provider.
- D.5. Subcontracting. The Private Provider shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a

minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Private Provider shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Private Provider warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Private Provider in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Private Provider hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Private Provider on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Private Provider shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Private Provider hereby attests, certifies, warrants, and assures that the Private Provider shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Private Provider shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Private Provider and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Private Provider shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Private Provider and made available to state officials upon request.
 - c. The Private Provider shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Private Provider understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a Private Provider from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a Private Provider is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal

Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. Records. The Private Provider shall maintain documentation for all charges under this Contract. The books, records, and documents of the Private Provider, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Private Provider's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Private Provider shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Private Provider, being an independent Contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Private Provider's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disaster, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Private Provider shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Private Provider agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Private Provider acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings,

representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Suzanne White
Tennessee Department of Children's Services
8th Floor, Cordell Hull Building
436 6th Avenue North
Nashville, TN 37243
Suzanne.G.white@state.tn.us
Phone: (615) 741-8905
Fax: (615) 532-1130

The Private Provider:

NAME & TITLE OF PRIVATE PROVIDER CONTACT PERSON
PRIVATE PROVIDER NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER
FAX # NUMBER

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Private Provider. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Private Provider shall cease all work associated with the Contract. Should such an event occur, the Private Provider shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Private Provider acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Private Provider agrees that if it is later determined that the true nature of the working relationship between the Private Provider and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Private Provider may be required to repay to TCRS the amount of retirement benefits the Private Provider received from TCRS during the period of this Contract.

E.5. Insurance. The Private Provider shall carry adequate liability and other appropriate forms of insurance.

a. The Private Provider shall maintain, at minimum, the following insurance coverage:

- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
- (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

b. At any time State may require the Private Provider to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Private Provider by the State or acquired by the Private Provider on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Private Provider to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Private Provider's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Private Provider of this Contract; previously possessed by the Private Provider without written obligations to the State to protect it; acquired by the Private Provider without written restrictions against disclosure from a third party which, to the Private Provider's knowledge, is free to disclose the information; independently developed by the Private Provider without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Private Provider to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Private Provider due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.7. HIPAA Compliance. The State and Private Provider shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Private Provider warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
 - b. Private Provider warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Private Provider will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Private Provider in compliance with HIPAA. This provision shall not apply if information received by the State under this contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8. Annual Report and Audit. The Private Provider shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Private Provider that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Private Provider may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Private Provider and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Private Provider shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Private Provider shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.
- E.9. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments;
 - b. The document entitled "DCS Provider Policy Manual" (the Document) including any changes or additions that may subsequently be made, herein attached by reference.
- In the event of a discrepancy or ambiguity regarding the Private Provider's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.
- E.10. Prohibited Advertising. The Private Provider shall not refer to this Contract or the Private Provider's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Private Provider or the Private Provider's services are endorsed.

It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.

- E.11. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.12. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Private Provider shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Private Provider shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.13. Lobbying. The Private Provider certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Private Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Private Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Private Provider shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.14. Debarment and Suspension. The Private Provider certifies, to the best of its knowledge and belief, that it and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or Private Provider;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.15. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

a. **Private Provider Breach**— The State shall notify Private Provider in writing of a Breach.

- (1) In event of a Breach by Private Provider, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) **Liquidated Damages**— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Private Provider of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Private Provider's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Private Provider as said amounts are likely to be uncertain and not easily proven. Private Provider hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment 2 and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Private Provider and do not include any injury or damage sustained by a third party. The Private Provider agrees that the liquidated damage amount is in addition to any amounts Private Provider may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Private Provider cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Private Provider shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) **Partial Default**— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Private Provider written notice of: (1) the date which Private Provider shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Private Provider.

In the event the State declares a Partial Default, the State may withhold,

together with any other damages associated with the Breach, from the amounts due the Private Provider the greater of: (1) amounts which would be paid the Private Provider to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Private Provider is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Private Provider. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Private Provider for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Private Provider shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Private Provider agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Private Provider shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Private Provider shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Private Provider without waiver of any other remedy or damages available to the State at law or at equity. The Private Provider shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Private Provider under this Contract. Private Provider agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of contract by the State, the Private Provider shall notify the State in writing within 30 days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Private Provider to provide said written notice shall operate as an absolute waiver by the Private Provider of the State's Breach. In no event shall any Breach on the part of the State excuse the Private Provider from full performance under this Contract. In the event of Breach by the State, the Private Provider may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Private Provider to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Private Provider to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Private Provider.

- E.16. **Partial Takeover**. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Private Provider is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Private Provider and a third party, although the Private Provider is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Private Provider shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Private Provider's other obligations under this Contract. The State may withhold from amounts due the Private Provider the amount the Private Provider would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Private Provider shall have no

right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.17. Cost Report. If requested by the State, the Private Provider shall complete a cost report using the best information available in accordance with the cost reporting instructions. The Private Provider shall also submit its most recent audited financial statements as requested by the State.
- E.18. Occupancy. The Private Provider acknowledges that this is a fee for service Contract and that neither the State nor the Private Provider can guarantee full occupancy.
- E.19. First Amendment. The Private Provider does not waive rights under the First Amendment to the United States Constitution.
- E.20. Drug Free Workplace. The Private Provider shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.
- E.21. Financial Information Required. The State must comply with the Office of Management and Budget Circular (OMB) A-87 to claim reimbursement for a portion of the cost of payments made under this contract from the federal government under Title IV-E and/or Title XIX. Information will be periodically required to be submitted by the Private Provider to enable DCS to comply with OMB A-87 and facilitate submission of claims to the federal government in accordance with DCS' federally approved cost allocation plan. Private Provider will be notified at the time documentation is requested the date the submission is required. The documentation to be submitted by the Private Provider will include but not limited to:
- a. Annual Contracted Private Provider Cost Report completing the forms and following the directions provided by the state;
 - b. Program description and two weekly schedules;
 - c. Audited financial statement with audit opinion for the audited period;
 - d. Reconciliation of the Cost Report to the independent audit; and
 - e. Letter under separate cover from independent auditor on whether the cost allocation method used by the Private Provider in the Cost Report appears to be reasonable.

Failure to submit the above-stated documentation on the specified date shall be deemed a breach of the Contract and the State shall have a right to terminate the contract for cause under Section D.4. of the Contract, or to consider such failure a Partial Default.

- E.22. Supplemental Conflict of Interest. The Private Provider shall not have any owner, member of the board of directors, or member of the board of trustees of that Contract Private Provider who also holds any other position which may influence the placements provided to children in the plaintiff class of Brian A. v. Phil Bredesen. Such positions include, but are not limited to juvenile court judges, referees or other court officers involved in the individual cases of children in foster care.
- E.23. Title VI of the Civil Rights Act of 1964. The Private Provider shall develop and deliver to DCS on or before July 31st of each fiscal year an implementation plan that describes the Private Provider's long-range goals and objectives that will guide the Private Provider's efforts to ensure compliance with Title VI of the Civil Rights Act of 1964 pursuant to the guidelines established by the Tennessee Title VI Compliance Commission. Title VI plans must be submitted to the division below on or before the July 31st of each year:

Director of the Division of Diversity Initiatives
TPS Campus - Mensler #3
1276 Foster Avenue
Nashville, TN 37210

- E.24. Requirements Bureau of TennCare. The Private Provider must comply with the following requirements as stipulated in the Contract between The Department of Children's Services and the Department of Finance and Administration, Bureau of TennCare.
- A. The Private Provider must disclose the following information in accordance with the Code of Federal Regulations, Title 42, Part 455, Subpart B:
 - (1) The name and address of each person with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has direct or indirect ownership of 5 percent or more;
 - (2) Whether any of the persons named, in compliance with paragraph E.24.A(1) of this section, is related to another as spouse, parent, child, or sibling;
 - (3) The name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest. This requirement applies to the extent that the disclosing entity can obtain this information by requesting it in writing from the person. The disclosing entity must—
 - (a) Keep copies of all these requests and the responses to them;
 - (b) Make them available to the Secretary or TennCare upon request; and
 - (c) Advise the TennCare when there is no response to a request.
 - B. The Private Provider must furnish to TennCare or to the Secretary on request, information related to business transactions in accordance with paragraph (1) of this section.
 - (1) The Private Provider must submit, within 35 days of the date on a request by the Secretary or TennCare, full and complete information about:
 - (a) The ownership of any subcontractor with whom the Private Provider has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
 - (b) Any significant business transactions between the Private Provider and any wholly owned supplier, or between the Private Provider and any subcontractor, during the 5-year period ending on the date of the request.
 - C. Before DCS enters into or renews a contract, or at any time upon written request by TennCare, the Private Provider must disclose to DCS and the Medicaid Agency the identity of any person who:
 - (1) Has ownership or control interest in the Private Provider, or is an agent or managing employee of the Private Provider; and
 - (2) Has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the title XX services program since the inception of those programs.

TennCare must notify the Inspector General of the Department of any disclosures made under paragraph E.24.C. of this section within 20 working days from the date it receives the information. The Private Provider must also promptly notify the Inspector General of the Department of any action it takes on the provider's application for participation in the program.

- D. DCS or TennCare may refuse to enter into or renew a contract with a Private Provider if any person who has an ownership or control interest in the Private Provider, or who is an agent or managing employee of the Private Provider, has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid or the title XX Services Program.
- E. DCS or TennCare may refuse to enter into or may terminate a Private Provider contract if it determines that the Private Provider did not fully and accurately make any disclosure required under paragraph C. of this section.

- F. Provider Requirements: Participation in the TennCare program will be limited to Private Providers who:
1. Agree that the provider may not refuse to provide covered medically necessary or covered preventive services to a child under the age of twenty-one (21) or a TennCare Medicaid patient under this Contract for non-medical reasons. However, the provider shall not be required to accept or continue treatment of a patient with whom the provider feels he/she cannot establish and/or maintain a professional relationship;
 2. Agree that emergency services be rendered without the requirement of prior authorization of any kind;
 3. Maintain an adequate record system and agree that all records be maintained for five (5) years from the close of the contract or retained until all evaluations, audits, reviews or investigations or prosecutions are completed for recording enrollee services, servicing providers, charges, dates and all other commonly accepted information elements for services rendered to enrollees pursuant to the contract (including but not limited to such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under the provider contract and administrative, civil or criminal investigations and prosecutions).
 4. Acknowledge and understand that as a condition of participation in TennCare, enrollees give the TennCare Bureau, the Tennessee Comptroller of the Treasury, and any health oversight agency, such as the Tennessee Office of Inspector General (TN OIG), Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU), United States Department of Health and Human Services (DHHS) the DHHS Office of Inspector General (DHHS OIG), and the United States Department of Justice (DOJ), and any other authorized state or federal agency, access to their records. Said records shall be made available and furnished immediately upon request for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring as well as for administrative, civil and criminal investigations or prosecutions upon the request of an authorized representative of the Private Provider, TennCare or authorized federal and state personnel, including, but not limited to, the Tennessee (TN OIG), the Tennessee Department of Children's Services Office of Inspector General (TDCS OIG), the TBI MFCU, the DHHS OIG and the DOJ.
 5. Agree that medical records requirements medical records be maintained at site where medical services are rendered and that enrollees aged 14 and over and enrollee authorized representatives shall be given access to the enrollees' medical records, to the extent and in the manner provided by T.C.A. Sections 63-2-101 and 63-2-102, and, subject to reasonable charges, be given copies thereof upon request.
 6. Agree that TennCare , DHHS, and the DHHS OIG, the Tennessee Comptroller of the Treasury, TN OIG, TBI MFCU, and DOJ, as well as any other authorized state or federal agency or entity shall have the right to evaluate through inspection, evaluation, review or request, whether announced or unannounced, or other means any records pertinent to this Contract including, but not limited to medical records, billing records, financial records, and/or any records related to services rendered, quality, appropriateness and timeliness of services and/or any records relevant to an administrative, civil and/or criminal investigation and/or prosecution and such evaluation, inspection, review or request, and when performed or requested, shall be performed with the immediate cooperation of the provider. Upon request, the Private Provider shall assist in such reviews including the provision of complete copies of medical records. Include a statement that HIPAA does not bar disclosure of Protected Health Information (PHI) to TennCare, TN OIG, TBI MFCU, DHHS, DHHS OIG and DOJ when and as authorized by HIPAA. Provide that any authorized state or federal agency or entity, including, but not limited to TennCare,

TN OIG, TBI MFCU, DHHS, DHHS OIG, DOJ, the Tennessee Comptroller of the Treasury, may use these records and information for administrative, civil or criminal investigations and prosecutions;

7. Accept monitoring, whether announced or unannounced, of services rendered to enrollees sponsored by the Private Provider;
8. Whether announced or unannounced, participate and cooperate in any internal and external Quality Management/Quality Improvement, utilization review, peer review and appeal procedures established by DCS and/or TennCare;
9. Initiate corrective action where necessary to improve quality of care, in accordance with that level of medical care which is recognized as acceptable professional practice in the respective community in which the Private Provider practices and/or the standards established by TennCare;
10. Provide for submission of all reports and clinical information required by DCS;
11. Cooperate with all appropriate State and Federal Agencies, including TBI MFCU and/or TN OIG, in investigating fraud and abuse. In addition, the Private Provider shall fully comply with the provisions of Tennessee Code Annotated Sections 71-5-2601 and 71-5-2603 in performance of its' obligations under this Contract.
 - (a) Fraud and abuse in the administration of the program. Suspected fraud and abuse in the administration of the program shall be reported to TBI MFCU and/or TN OIG.
 - (b) Provider fraud and abuse. All confirmed or suspected provider fraud and abuse shall immediately be reported to TBI MFCU.
 - (c) Enrollee fraud and abuse. All confirmed or suspected enrollee fraud or abuse shall be reported immediately to TN OIG.
12. Upon request and as required by this Contract or state and/or federal law, make available to the TBI MFCU/TN OIG any and all administrative, financial and medical records relating to the delivery of items or services for which TennCare monies are expended. In addition, the TBI MFCU/TN OIG shall, as required by this Contract or state and/or federal law, be allowed access to the place of business and to all TennCare records of the Private Provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. Special circumstances shall be determined by the TBI MFCU/TN OIG.
13. Secure all necessary liability and malpractice insurance coverage as is necessary to adequately protect the enrollees and DCS under this Contract. The Private Provider shall provide such insurance coverage at all times during the Contract and upon execution of the Private Provider Contract furnish DCS with written verification of the existence of such coverage;
14. Agree to recognize and abide by all state and federal laws, regulations and guidelines applicable to the health plan.
15. Acknowledge that this Private Provider Contract incorporates by reference all applicable federal and state laws, TennCare rules and regulations or court orders, and revisions of such laws or regulations shall automatically be incorporated into the Contract, as they become effective. In the event that changes in the Contract as a result of revisions and applicable federal or state law materially affect the position of either party, DCS and Private Provider agree to negotiate such further amendments as may be necessary to correct any inequities;
16. Recognize that in the event of termination of the Contract between DCS and TennCare for any of the reasons, the Private Provider shall immediately make available, to TennCare, or its designated representative, in a usable form, any or all records, whether medical or financial, related to the Private Provider's activities

undertaken pursuant to the DCS/Private Provider Contract. The provision of such records shall be at no expense to TennCare;

17. Warrant that no part of the total Contract amount provided herein shall be paid directly, indirectly or through a parent organization, subsidiary or an affiliate organization to any state or federal officer or employee of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Private Provider in connection with any work contemplated or performed relative to this Contract unless disclosed to the Commissioner, Tennessee Department of Finance and Administration. For purposes of Section E.24.f.17 and its subparts of this Contract, "immediate family member" shall mean a spouse or minor child(ren) living in the household.

Quarterly, by January 30, April 30, July 30, and October 30 each year, or at other times or intervals as designated by the Deputy Commissioner of the Bureau of TennCare and communicated, in writing, to the Private Provider by DCS, disclosure shall be made by the Private Provider to DCS in writing and DCS will forward the disclosure to the Deputy Commissioner of the Bureau of TennCare, Department of Finance and Administration. The disclosure shall include, but not be limited to, the following:

- (a) A list of any state or federal officer or employee of the State of Tennessee as well as any immediate family member of a state or federal officer or employee of the State of Tennessee who receives wages or compensation from the Private Provider; and
- (b) A statement of the reason or purpose for the wages or compensation.

The disclosures shall be made by the Private Provider and reviewed by TennCare in accordance with Standard Operating Procedures and the disclosures shall be distributed to, amongst other persons, entities and organizations, the Commissioner, Tennessee Department of Finance and Administration, the Tennessee Ethics Commission, the TennCare Oversight Committee and the Fiscal Review Committee.

This Contract may be terminated by DCS and/or the Private Provider may be subject to sanctions under this Contract if it is determined that the Private Provider, its agents or employees offered or gave gratuities of any kind to any state or federal officials or employees of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee if the offering or giving of said gratuity is in contravention or violation of state or federal law. It is understood by and between the parties that the failure to disclose information as required under Section E.24.f.17 of this Contract may result in termination of this Contract and the Private Provider may be subject to sanctions in accordance with the provisions of this Contract. The Private Provider certifies that no member of or delegate of Congress, the United States General Accounting Office, DHHS, Centers for Medicare and Medicaid Services (CMS), or any other federal agency has or will benefit financially or materially from this Contract.

18. Certify by signing this Contract, to the best of its knowledge and belief, that federal funds have not been used for lobbying in accordance with 45 CFR Part 93 and 31 USC 1352. (See also TCA 3-6-101 *et seq.*, 3-6-201 *et seq.*, 3-6-301 *et seq.*, and 8-50-505.).
19. Assure that all material and information, in particular information relating to enrollees or potential enrollees, which is provided to or obtained by or through Private Provider's performance under this Contract, whether verbal, written, tape, or otherwise, shall be reported as confidential information to the extent confidential treatment is provided under state and federal laws. The Private Provider shall not

use any information so obtained in any manner except as necessary for the proper discharge of its obligations and securement of its rights under this Contract.

All information as to personal facts and circumstances concerning enrollees or potential enrollees obtained by the Private Provider shall be treated as privileged communications, shall be held confidential, and shall not be divulged without the written consent of DCS or TennCare or the enrollee/potential enrollee, provided that nothing stated herein shall prohibit the disclosure of information in summary, statistical, or other form which does not identify particular individuals. The use or disclosure of information concerning enrollees/potential enrollees shall be limited to purposes directly connected with the administration of this Contract.

20. Accept general and targeted education regarding emergency appeals, including when an emergency appeal is appropriate, and procedures for providing written certification thereof, and comply with the appeal process, including but not limited to, assisting an enrollee by providing appeal forms and contact information including the appropriate address for submitting appeals for state level review; and
 21. Display notices of the enrollee's right to appeal adverse action affecting services in public areas of their facility(s) in accordance with TennCare rules and regulations, subsequent amendments, or any and all court orders. DCS shall ensure that Private Providers have correct and adequate supply of public notices;
 22. Acknowledge that the Private Provider has been informed of the package of benefits that Early and Periodic Screening, Diagnosis and Treatment (EPSDT TENNCare) offers as set out in Section 2-3.u of the TennCare MCO Contractor Risk Agreement (CRA) and which requires providers to make treatment decisions based upon children's individual medical and behavioral health needs. The Private Provider further acknowledges that a copy of Section 2-3.u can be accessed on the TennCare web site will be furnished to the provider upon request. The TennCare Web site is found at: <http://www.state.tn.us/tenncare/healthplans/TCMCO1.htm>
 23. Agree not to encourage or suggest, in writing or verbally, that TennCare children be placed into state custody in order to receive medical or behavioral services covered by TennCare;
 24. Agree to follow DCS and TennCare procedures for the provision of language interpretation and translation services for any enrollee who needs such services, including but not limited to, enrollees with Limited English Proficiency.
 25. Agree that if any requirement in the Private Provider Contract is determined by TennCare to conflict with the Contract between TENNCARE and DCS, such requirement shall be null and void and all other provisions shall remain in full force and effect
 26. Certify by signing this Contract that the Private Provider has not been excluded from participation in the Medicare and/or Medicaid programs pursuant to Sections 1128 or 1156 of the Social Security Act or who are otherwise not in good standing with the TennCare program.
- E.25. Supplemental Subcontracting In accordance with the Brian A. Settlement Agreement (specifically, the Racial Disparities Study conducted by Dr. Ruth McRoy) the Department is actively working towards decreasing the racial disparity between the service providers and the target service populations. To help correct this disparity, DCS strongly recommends, in situations where subcontracts are necessary, that the Private Provider subcontract for services with minority owned or operated Private Provider that can assist the Private Provider in meeting the needs of the children and families that are served. DCS requires that the Private Provider join the Department's commitment to achieving diversity and in developing programs that reflect the diversity of the population that we serve.

- E.26. Monitoring Subcontracts. The Private Provider shall develop written procedures for monitoring all DCS approved subcontracts. The procedures must clearly outline the process for assuring that all sub-contracts are in compliance with the federal and state safety requirements as outlined in the DCS Policy Manual, Section 16.4 and the Private Provider Manual (Personnel and Resource Home Eligibility Team (RHET) requirements). The procedures shall be available upon request to DCS and any other entity approved by DCS. The Private Provider shall have quality assurance/quality improvement plans for subcontractors. The Private Provider shall also establish and maintain an internal quality improvement process to assess its performance and that of its subcontractors.
- The Private Provider shall not subcontract for services with any person or entity that has had a contract terminated by DCS for failure to satisfactorily perform or for cause; or has failed to implement a corrective action plan approved by DCS or any other governmental entity, after having received due notice.
- E.27. Operating Capital. The Private Provider shall maintain a plan to ensure access to operating capital of ninety (90) days, in the event payment to the Private Provider is interrupted for reasons beyond the Private Provider's control or in an emergency, for continuity of operations.
- E.28. Private Provider Gatekeeper Contact. The Private Provider shall provide information to the Child Placement & Private Provider's Division (CPPP) relative to the Private Provider's gatekeeper or representative empowered to make placement decisions on behalf of the Private Provider that would allow access 24 hours a day seven days a week to DCS. The information to be provided are as follows: gatekeeper/representative name(s); title; direct telephone number(s), cell phone number and/or pager number(s).
- E.29. Performance Standards. By executing of this contract the Private Provider hereby acknowledges and agrees that its performance under this contract must meet the standards set forth in Section A of this contract and the DCS Provider Policy Manual and will be bound by the conditions set forth in this contract. If the Private Provider fails to meet these standards, as determined by the Child Placement & Private Providers Division, DCS, at its exclusive option, may allow up to six months for the provider to achieve compliance with the standards. If performance deficiencies are not resolved to the satisfaction of DCS within the prescribed time, and if no extenuating circumstances can be documented by the Private Provider to DCS' satisfaction, DCS may cancel the contract with the Private Provider. The determination of the extenuating or mitigating circumstances is the exclusive determination of DCS.
- E.30. Notification of Closure. The Private Provider shall notify DCS of the closure of their agency or facility ninety (90) days prior to the date of closure. Failure to provide DCS ninety (90) days written notice of a Private Provider's intent to close its operations or any part of their operation shall be considered a breach of this contract and subject to the penalties defined in Section E.15. Breach of this contract.
- E.31. Closure Transition. In the event that this contract is terminated the Private Provider shall work in conjunction with DCS to transition out of the contract within ninety (90) days from the date of notification. This time period will allow the Private Provider and DCS sufficient time to reconcile records, transfer case files and transition out of its contracts with DCS.
- E.32. State Ownership of Case Files. The State shall have all ownership right, title, and interest, in all case files created, designed, developed, derived, documented, installed, or maintained on behalf of DCS under this Contract. DCS shall have unlimited rights to all said case files. The Private Provider shall furnish such information and data upon request of the DCS, in accordance with the Contract and applicable State law.
- E.33. Penalties. DCS reserves the right to assess penalties to Private Providers for failure to adhere to program and policy guidelines. The Private Provider shall be notified by letter and/or e-mail of non-compliance and given an opportunity to correct said non-compliance within a specified period. Potential penalties will be clearly defined in the notification but will not exceed the per diem rate per child for the level of service provided times the period of non-compliance.

IN WITNESS WHEREOF:

PRIVATE PROVIDER LEGAL ENTITY NAME:

PRIVATE PROVIDER SIGNATURE

DATE

PRINTED NAME AND TITLE OF PRIVATE PROVIDER SIGNATORY (above)

DEPARTMENT OF CHILDREN'S SERVICES:

Viola P. Miller Commissioner

Date

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
PRIVATE PROVIDER LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Private Provider, identified above, does hereby attest, certify, warrant, and assure that the Private Provider shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

**SIGNATURE &
DATE:**

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Private Provider. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Attachment 2

Liquidated damages are five hundred dollars (\$500.00) per day per child that is being served by the contract that has been breached, until the Private Provider cures the breach, the State exercises its option to declare a partial default, or the State terminates the Contract. A breach is failure to perform any of the required services detailed in the "Provider Policy Manual" for said contract. Such amount represents the costs and efforts necessary to procure an alternate vendor(s) to provide the defaulted service; re-staff individual cases, provide or perform the contract requirements; and/or facilitate contract compliance by the Private Provider.